

§§ 1910.54—1910.100 [Reserved]

Subpart C—Commercial Credit Reports

SOURCE: 52 FR 6498, Mar. 4, 1987, unless otherwise noted.

§ 1910.101 Preface.

FmHA or its successor agency under Public Law 103–354 Instruction 1910–C (available in any Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354 office) describes the procedure to be used by FMHA in obtaining commercial credit reports. A nonrefundable fee, set forth in § 1910.106(d) of this Instruction will be collected from the applicant, general contractor or dealer contractor who is the subject of the report.

§§ 1910.102—1910.150 [Reserved]

PART 1922—APPRAISAL

Subparts A–D [Reserved]

Subpart E—Appraisal of Farms and Leasehold Interests

1922.201 General.

1922.202–1922.208 [Reserved]

1922.209 Easements and appraising property subject to easements.

1922.210–1922.250 [Reserved]

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Subparts A–D [Reserved]

Subpart E—Appraisal of Farms and Leasehold Interests

SOURCE: 58 FR 44750, Aug. 25, 1993, unless otherwise noted.

§ 1922.201 General.

This subpart prescribes the procedures and guidelines for conducting appraisals in connection with making and servicing Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) insured loans on farm tracts. It also includes guidance for market valuations of farm tracts when leasehold inter-

ests, Conservation Reserve Program, easements and mineral rights are involved. Farm tracts will be appraised for market value. FmHA or its successor agency under Public Law 103–354 designated appraisers and contract appraisers will comply with the guidelines and standards as set out in Sections I and II of the Uniform Standards of Professional Appraisal Practice (USPAP), when completing farm tract appraisals as prescribed in this subpart. A current copy of Sections I and II of USPAP promulgated by The Appraisal Foundation is located in each FmHA or its successor agency under Public Law 103–354 State Office.

§§ 1922.202–1922.208 [Reserved]

§ 1922.209 Easements and appraising property subject to easements.

(a) *Easements.* Easements represent an interest in real property that conveys use, but not ownership, of a portion of an owner's property. Easements frequently permit a specific portion of a property to be used for access to an adjoining property or as a public right-of-way. Although surface easements are the most common, subterranean and overhead easements are used for public utilities, roadways, bridges, air rights, etc. Basic easement valuation concepts are as follows:

(1) A property that acquires an easement is the beneficiary of additional rights; one that is subject to an easement is burdened. Easement rights can be conveyed in perpetuity or for a limited time period. An easement can be created by a contract between private parties or it can be arranged by states, municipalities, or public utilities through the exercise of eminent domain. In any case, a valuation is needed to estimate the price the easement beneficiary should pay to the burdened party.

(2) An easement that affords ingress and egress to an otherwise landlocked parcel may increase its value. The value of an easement is usually estimated as some part of the amount of value it adds to the property it benefits; the burdened property's loss in value can also be used to indicate the value of an easement. The value of an

easement reflects the basic economic concept of contribution.

(3) When an easement is acquired by a public utility company for overhead power lines, valuation becomes more complicated. In all cases, however, an easement is a partial interest in the burdened real estate property.

(4) Preservation easements, such as conservation easements, prohibit physical changes to the property. Usually, the owner must maintain the condition of the property at the time the easement is donated or immediately after a proposed restoration. The economic theory that underlies the valuation of preservation easements is generally the same as that which governs eminent domain appraising, although the acquirer of a preservation easement receives rather than takes rights. Each easement document contains specific controls and restrictions. An appraiser must carefully analyze easement restrictions or proposed restrictions to determine how it affects the property. Damage to the remaining property is the difference in the value of the remainder as a part of the whole, or its value before the easement, and the value of the remaining property after the easement before consideration of compensation. The amount of compensation is determined by subtracting the value of the remaining property after the easement, before compensation, from the value of the remaining property after easement, after compensation.

(5) Frontage easements (roads or underground water pipes, electricity, communication lines) can contribute to the value of the property. Rights considered consist of both subsurface and surface rights. Fair or just compensation consists of compensation for: The taking and use of the subsurface; the cost of replenishing any items destroyed (lawns, bushes, etc.); and any inconvenience or interruption during installation and later maintenance. Detailed market analysis may be completed to determine the value of the easement. Usually, 1 percent of the fair market value is adequate compensation for property taken. It may be higher when subsurface property has considerable disruption factors.

(6) Oil, gas, pipeline and powerline easements crossing property can be determined by two approaches. The appraiser can find comparable sales of land and narrow strips of land that have been sold or purchased in the market and tabulate the prices received and paid, or use the before and after values as set out in paragraph (b) of this section. Most landowners realize that a taking agency should pay no more than what it has paid others to acquire similar easements needed in the same area or what other landowners have accepted as compensation for the same kind of rights.

(b) *Appraising property subject to easements.*

(1) When there is an established traditional market for properties containing conservation or other easements, value of the property subject to the easement can be determined through the normal appraisal process outlined in § 1922.207 of this subpart.

(2) If there is no established traditional market (market value for the easement) for properties containing conservation or other easements, value of the property subject to the easement can be determined as outlined in paragraph (d) of this section. When there is an existing easement on the subject property, the before valuation will be completed assuming there is no easement on the property. The after valuation will be the market value of the property subject to an easement.

(c) *Appraising property with no established market for easements.* In most cases, there is no established traditional market for conservation easements or other easements. These interests must be valued indirectly through the Before and After method of appraisal. The Before and After method is used to determine whether, and the degree to which, an easement changes a property's use and value. The value of property after the imposition of the easement is subtracted from the value of the property before the imposition of the easement to estimate the value of the easement. Each value conclusion is made as of the same date. The following steps will be used to determine the value of easements to the subject property being appraised, i.e., if there is no

traditional market for the easement available:

(1) *Before valuation.*

(i) Apply highest and best use principles.

(A) *Determine the property's highest and best use in its current condition unrestricted by the easement (the "Before" value).* Generally, in this step the appraiser considers the suitability of the property's current use under existing zoning and market conditions and estimates the reasonable likelihood of a change in use (and the associated direct and indirect costs and delay), absent the easement, to realize a more profitable economic use.

(B) *Evaluate potential for continuation of existing use and alternative uses.* Under this step the appraiser estimates the property's potential for continuation of existing use, if its existing use or realistic alternative uses generate greater value. Alternative uses may include, if appropriate, either existing improvements or as vacant land which may include the following: Subdivision, Redevelopment, Renovation, Flooding, or Timbering.

(C) *Estimate remoteness of eventual zoning changes.* Under this analysis, the appraiser must consider future changes in zoning. The quantification for the supported future probability of a change must be recognized in the market place and supported by quantification—both statistical and anecdotal. Hypothetically, value added to land by possibilities of development is not an appropriate pre-easement consideration, unless factually supported in the report.

(ii) *Apply the three recognized approaches to value.* This will be accomplished as set out in §1922.207 of this subpart. The appraiser will apply, as appropriate, the three approaches to the "Before" value to estimate the value of the property without restrictions or not being encumbered by the easement. Comparable properties used should not be encumbered by the easement. All factors must be analyzed in view of the current local market, which if necessary, reflects foreseeable trends reflected in the market place, such as rezonings, demolition permits, subdivision approvals, leases, etc. The three approaches should be used when-

ever possible to estimate the value of an easement. For each method not used, the appraiser must explain why the omitted method is not applicable.

(2) *After valuation.*

(i) *Determining highest and best use by comparing easement covenants to existing zoning regulations and other controls.* The appraiser must analyze the easement terms and covenants, individually and collectively, and compare them to existing zoning regulations and other controls to estimate whether, and the extent to which, the use restrictions contained in the easement will affect current and alternate future uses of the property. Examples of pre-existing controls include local regulations, such as agricultural or historic district zones; statewide regulations, such as land-gain taxes to deter land speculation; and Federal limitations, such as flood plain controls or the necessity to obtain environmental or historic preservation reviews for federally licensed or assisted projects encumbered or restricted by the easement.

(ii) *Changes in highest and best use.* Easement restrictions may be reflected in the three approaches to value even without a change in highest and best use. Under the Comparable Sales approach to value, a well informed purchaser would consider the immediate and long term costs of complying with the easement and pay less for a restricted property than for otherwise comparable unrestricted properties. Similarly, the Cost and Income approaches may indicate immediate and long term value impairment attributable to the easement. The change in market value attributable to an easement is frequently greater on properties in those agricultural, recreational, residential, or commercial areas that are experiencing a change in highest and best use. Where current use is commensurate with highest and best use, an easement perpetually limiting use of the property to current use may have nominal value.

(iii) *Apply the three approaches to value.* This will be accomplished as set out in §1922.207 of this subpart. The appraiser will apply the Comparable Sales, Cost, and Income approaches as appropriate to estimate the value of

the property as encumbered or restricted by the easement. Comparable properties used would be subject to the type of easement appraised. Market abstractions, market analysis as well as feasibility analysis should be made part of this report. The three approaches should be used whenever possible to estimate the value for an easement. For each method not used, the appraiser must explain why the omitted method is not applicable.

(d) *Arriving at the estimated value of the easement.* The Recommended Market Value of the property arrived at from the After valuation is subtracted from the Before valuation to arrive at the estimated value of the easement.

(e) *Arriving at the Recommended Market Value of the property subject to an easement.* The Recommended Market Value of the property will be the Recommended Market Value of the property arrived at from the After valuation approach.

§§1922.210-1922.250 [Reserved]

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

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- 1924.1 Purpose.
- 1924.2 [Reserved]
- 1924.3 Authorities and responsibilities.
- 1924.4 Definitions.
- 1924.5 Planning development work.
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- 1924.7 [Reserved]
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- 1924.13 Supplemental requirements for more complex construction.
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- 1924.49 State supplements.
- 1924.50 OMB control number.

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- EXHIBIT A—ESTIMATED BREAKDOWN OF DWELLING COSTS FOR ESTIMATING PARTIAL PAYMENTS
- EXHIBIT B—REQUIREMENTS FOR MODULAR/PANIALIZED HOUSING UNITS
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- EXHIBIT D—THERMAL PERFORMANCE CONSTRUCTION STANDARDS
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EXHIBITS TO SUBPART C

- EXHIBIT A [RESERVED]